IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 1437 of 1997

Between:

Bangaru Venkatesh,

S/o.B. Venkanna, working as Male Thoty,

District Hospital, Eluru, West Godavari District.

..... PETITIONER

AND

1. The Deputy Commissioner,

District Head-quarters hospital,

Eluru, West Godavari District.

2. The Presiding Officer,

Labour Court, Guntur, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to]issue a writ or order or direction more particularly a writ of certiorari calling for all the connected records including the impugned award in I.D.No.310/89, dated 12-10-1995 of the 3rd respondent herein so far as it relates to the denial of back wages and attendant benefits to the petitioner herein as illegal, improper, unjust, arbitrary and contrary to law and further declare that the petitioner is entitled for the backwages with all consequential benefits including monetory, seniority etc.,

Counsel for the Petitioner :MR.K.G.KRISHNA MURTHY

Counsel for the Respondent No.1 :G.P.for Medical and Health.

Counsel for the Respondent No.2: G.P.for Labour.

The Court made the following :

ORDER:

This Writ Petition is filed by the petitioner aggrieved by the order of the Labour Court in I.D.No.310 of 1989 dated 12-10-1995 under which an order of reinstatement was passed, with continuity of service, but, however, denied back wages. Therefore, the petitioner has come up with the present writ petition aggrieved by the denial of back wages.

2. The learned Counsel for the petitioner contended that as the petitioner was suffering from ill health, he sent a letter seeking leave, which was not sanctioned. Therefore, the petitioner's absence was treated as unauthorized, and thereafter disciplinary proceedings were initiated, and finally an order of termination was passed against the petitioner on 31-05-1989. According to the learned Counsel for the petitioner, the Tribunal satisfied that the said termination was illegal and without jurisdiction, and having held so, the Tribunal ought to have granted back wages, as the petitioner was denied and deprived of his services as well as earnings. Therefore, the award of the tribunal to that extent is liable to be set aside.

3 . The learned Government Pleader for Medical & Health, on the other hand, supported the Award of the Tribunal.

4. Heard the learned counsel for the parties and considered the material on record.

5. The material on record shows that the petitioner was originally appointed as "Male Thoty" on 03-01-1981 on temporary basis. Later his services were regularized with effect from 05-04-1983. While so, the petitioner absented from duty from 1-4-89 to 20-4-89 on the ground that he was suffering from ill health. Though a letter was sent, that was not accepted by the competent authority, and, thereafter, disciplinary proceedings were initiated, and in pursuance of the domestic enquiry, the petitioner was served with an order dated 31-10-1989 terminating his services. Therefore, the petitioner has approached the Tribunal, and the Tribunal, while considering the rival contentions, observed that the petitioner absented without obtaining any leave for a

period of 24 days, during the period from November, 1981 to January, 1983, though he was sanctioned leave for a period of 9 days from 5-11-1982 to 31-11-1982. The Tribunal also noticed the chronic attitude of the petitioner in absenting from duty without even applying for leave during the above said period. Therefore, the Tribunal felt that the action was properly initiated. But, however, the punishment of removal imposed was held disproportionate to the offence committed by the petitioner. Therefore, the Tribunal ordered reinstatement of the petitioner. In view of the facts and circumstances of the case, though the tribunal was inclined to order reinstatement with continuity of service, but denied back wages as the petitioner was out of service by virtue of his own conduct.

6. In that view of the matter, the award of the Labour Court does not call for any interference. Though, the learned Counsel for the petitioner contended that denial of back wages for the period during which he was out of service is not proper and just, but in view of the facts brought on record and the findings recorded by the tribunal, this Court declines to interfere with the award passed by the Labour Court.

7. The Writ petition is accordingly dismissed. No costs.

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S. Ananda Reddy, J.

Dt: 28-07-2004.

To

1. The Deputy Commissioner,

District Headquarters hospital,

Eluru, West Godavari District.

2. The Presiding Officer,

Labour Court, Guntur, Guntur District.

3. Two CCs to Government Pleader for Medical and Health,

High Court of A.P.,Hyderabad.(O.U.T),

4. Two CCs to Government Pleader for Labour, High Court of A.P.,

Hyderabad.(O.U.T),

5. Two CD copies.

KVH/ **RNS**